

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

OP.No. 13981 of 2003(M)

PETITIONER:

K.A.MARIAMMA, PROPRIETOR,
MALANAD PERFUMERY INDUSTRIES,
TAJ NAGAR, NAINARMOOLA, KLAMPADY P.O.,
KASARAGOD DISTRICT.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:

1. THE INTELLIGENCE OFFICER (I.B),
INVESTIGATION BRANCH, AGRL.INCOME TAX AND SALES
TAX, KANNUR.
2. DEPUTY COMMISSIONER OF AGRL.INCOME TAX
AND SALES TAX KANNUR.
3. BOARD OF REVENUE (TAXES),
THIRUVANANTHAPURAM.
4. SPECIAL DEPUTY TAHSILDAR (RR),
TALUK OFFICE, KASARAGOD.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 23589 OF 2003 IN OP 13981 OF 2003

DISMISSED

25.6.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 28.3.1995 AGAINST NOTICE OF PROPOSAL FOR PENALTY.

EXT.P2 TRUE COPY OF THE PENALTY ORDER PASSED BY THE FIRST RESPONDENT DATED 4.4.1995

EXT.P3 TRUE COPY OF THE REVISED PENALTY ORDER DATED 20.11.1995 PASSED BY THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF THE BILL NO. 1 DATED 12.8.1993 ISSUED BY THE PETITIONER TO M/S. ANDHRA AROMATIC

EXT.P5 DO.DO. BILL NO. 2 DO.DO.

EXT.P6 TRUE COPY OF THE SUPPLY ORDER DATED 5.8.1993 PLACED BY M/S. ANDHRA AROMATICS TO THE PETITIONER.

EXT.P7 TRUE COPY OF THE AIRWAY BILL DATED 11.2.1994 ALONG WITH ANNEXURES.

EXT.P8 TRUE COPY OF THE CERTIFICATE IN FORM H DATED 31.7.1995

EXT.P9 TRUE COPY OF THE DECLARATION IN FORM C DATED 12.8.1993

EXT.P10 TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 14.6.1996

EXT.P11 TRUE COPY OF THE NOTICE FOR SUO MOTO REVISION ISSUED BY THE THIRD RESPONDENT DATED 10.9.1997

EXT.P12 TRUE COPY OF THE ORDER PASSED BY THE THIRD RESPONDENT DATED 6.2.1998

EXT.P13 TRUE COPY OF THE REQUEST MADE BY THE PETITIONER TO THE THIRD RESPONDENT DATED 23.1.2003

EXT.P14 TRUE COPY OF THE ORDER PASSED BY THE THIRD RESPONDENT DATED 19.2.2003

EXT.P15 TRUE COPY OF THE DEMAND NSOTICE ISSUED BY THE FOURTH RESPONDENT DATED 16.2.1996 UNDER SECTION 7 OF THE RR ACT.

EXT.P16 DO. DO UNDER SECTION 34 WITH ENGLISH TRANSLATION.

EXT.P17 TRUE COPY OF RECEIPT OF MONEY DATED 13.7.1998

RESPONDENTS' EXHIBITS;; NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. No. 13981 of 2003

Dated this the 25th day of June, 2007

JUDGMENT

Petitioner is challenging Ext.P14 order whereunder the Commissioner of Commercial Taxes confirmed his earlier penalty order after remand by this Court vide judgment in O.P.No. 11473 of 1998 dated 5.9.2002. Petitioner was subjected to penalty under Section 45A of the Act for evasion of tax in respect of 216 Kgs. of sandalwood oil during the year 1993-94. However, the Deputy Commissioner allowed revisions against penalty orders based on copies of C Forms, H Forms, etc., produced by the petitioner. On further scrutiny by the Commissioner of Commercial Taxes (then Board of Revenue), it was noticed that sale bill books had been manipulated and originals of the declarations were not furnished by the petitioner. Even though petitioner was given an opportunity, petitioner did not appear in the proceedings of the Commissioner, which led to exparte orders based on records. Against this petitioner filed Writ Petition before this Court and this Court gave one more opportunity with specific direction as

follows:

The petitioner is therefore directed to approach the Commissioner with a copy of this judgment, and the Commissioner will fix a date of hearing and give notice to the petitioner's representative. Thereafter the petitioner on the date fixed by the Commissioner will appear before the Commissioner with the entire documents along with H and C forms in original, and the Commissioner will hear the petitioner, peruse the records and Forms and issue fresh orders. If the petitioner produces documents calling for fresh orders, and if the Commissioner passes fresh orders, Ext.P12 will stand superseded. However, if the petitioner does not produce evidence and appear before the Commissioner, the Ext.P12 will stand confirmed.

2. In spite of the above opportunity granted, petitioner did not appear, nor did the petitioner produce any documents. Therefore the commissioner naturally confirmed the orders following the directions contained in the judgment itself. It is against this order that the petitioner has approached this Court with this Writ Petition a second round.

3. Even though counsel for the petitioner produced some Tribunal's orders again remanding the assessment case, I do not think those orders need be looked into in penalty proceedings which are

independent and distinct proceedings. Moreover petitioner's persistent failure to produce originals of declarations and sale bills go to establish that the Commissioner's findings are factually correct. In the circumstances, and since earlier judgment of this Court was self-operative, which was followed by the Commissioner, there is no scope for interference again, that too for granting another opportunity to the petitioner for producing records which pertain to 14 years back transactions. W.P. is therefore devoid of any merit and is dismissed. However, since the matter is pending for long and petitioner is stated to be seriously sick, I waive full interest, if the petitioner clears the entire arrears of penalty before 30.9.2007.

(C.N.RAMACHANDRAN NAIR)
Judge

